

## CHAPTER 18

# SPECIFIC COURTS AND TRIBUNAL<sup>1</sup>

## 18.1 INTRODUCTION

Apart from the ordinary courts of law as discussed in the preceding chapter, there are many courts with limited and specialised jurisdiction in Malaysia. Special courts usually do not follow the same procedural rules as in the courts of general jurisdiction. Further, special courts often proceed without the benefit or expense of legal representation. The judges who serve in special courts are as varied as the special courts themselves. More importantly, cases are more likely to be disposed of speedily than in a court of general jurisdiction.

Apart from the special courts, there are also many tribunals established in Malaysia to provide for speedy relief at minimal cost.<sup>2</sup> Although tribunals may resemble courts as they make a decision on a particular dispute, they are not part of the court system but run parallel to the court system. In *SD Joshi v. High Court of Judicature at Bombay*,<sup>3</sup> the Supreme Court of India stated:

Tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts.

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1 This Chapter is contributed by Ashgar Ali Ali Mohamed and Farheen Baig Sardar Baig.

2 See *Oxbridge Height Sdn Bhd v. Rozila Razli* [2010] 1 LNS 1085.

3 AIR 2011 SC 848.

Unlike a court which has formal rules in conducting a case, a tribunal is 'a specially constituted body'<sup>4</sup> which is less formal, less expensive, and with a quicker way to resolve a dispute. The adjudicators of a tribunal usually have special knowledge about the subject-matter. Further, in a tribunal, the parties are generally entitled to be heard but are not entitled to legal representation. However, like a trial in court before a judge, the adjudicators are responsible for conducting fair hearings and making final decisions on the issues. Further, both tribunals and courts are opened to the public. In *Lee Yuen Siang & Ors v. Wong Mee Yian*,<sup>5</sup> it was stated: 'A tribunal is a body established to settle specific disputes. It has similarities to a court, and is presided by a person, usually called a Chairman, who takes up the role of an arbiter to hear the case. However, it is not a court of competent jurisdiction.'

Having said the above, this chapter discusses the jurisdiction and powers of the selected special courts namely, the Syariah Court, Industrial Court, 'Labour Court' and Native Courts. Besides the above special courts, the chapter also included the discussion of the selected tribunals namely, the Tribunal for Consumer Claims and Tribunal for Homebuyer Claims.

## 18.2 SYARIAH COURTS PURPOSES

The constitution, organisation and procedure of the Syariah courts are established by the State legislature<sup>6</sup> with the exception of the Federal Territories, where the power is vested with the Parliament.<sup>7</sup> Item 1 of the State List provides:

The constitution, organization and procedure of Syariah courts which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law.

4 Per Gopal Sri Ram JCA in *Hazlinda bte Hamzah v. Kumon Method of Learning Centre* [2006] 2 CLJ 933.

5 [2019] 1 LNS 1053.

6 See the Ninth Schedule of the Federal Constitution, Item 1 of the State List.

7 *Ibid.* Item 6(e) of the Federal List refers expressly to item 1 of the State List.

As from the above, the jurisdiction of the Syariah courts applies only to Muslims and, further, being a State court, its jurisdiction and power lies within the boundaries of the respective state. It must be noted that a Syariah court would not exist until the state exercises its powers under item 1 of the State List to create it. Being a Federation, Malaysia is divided into 13 states and three Federal Territories.<sup>8</sup> Each of these states has its own Syariah courts for the administration of Islamic law. It basically has a three-tier system, namely, the Syariah Subordinate Court, the Syariah High Court and the Syariah Appeal Court. In *Sukma Darmawan Sasmitaat Madja v. Ketua Pengarah Penjara Malaysia & Anor*,<sup>9</sup> Mohd Eusoff CJ stated that:

[T]oday, the Syariah courts in each State and in the Federal Territories have their own officers to investigate and prosecute cases in their own courts. Their court system is similar to and running parallel with the civil court system. It has its own Syariah subordinate court; the Syariah High Court and Syariah Appeal Court. The decisions of the Syariah subordinate court are appealable to the Syariah High Court, and the Syariah Court of Appeal hears appeals from their High Courts. The Chief Syariah Judge is the head of the Syariah courts and the Chief Syariah Prosecutor has the power to institute, conduct or discontinue any proceeding for an offence before a Syariah court.

His Lordship further stated that: “since the Syariah courts have their own system, their own rules of evidence and procedure which in some respects are different from those applicable to the civil courts, it is only appropriate that the civil court should refrain from interfering with what goes on in the Syariah courts”.

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8 The Federal Territory of Kuala Lumpur was excluded from the boundaries of the State of Selangor *vide* Constitution (Amendment) (No 2) Act 1973 (Act A206); Federal Territory of Labuan was excluded from the boundaries of the State of Sabah *vide* Constitution (Amendment) (No 2) Act 1984 (Act A585) and the Federal Territory of Putrajaya was excluded from the boundaries of the State of Selangor *vide* Constitution (Amendment) Act 2001 (Act A1095).

9 [1999] 2 CLJ 707, FC.

It may be further noted that the civil courts have no power to enforce matters pertaining to Syariah courts.<sup>10</sup> The jurisdiction and powers of these courts are found in the following state enactments:

- (1) Administration of the Syariah Court Enactment 1991 (Perlis) (Enactment No. 5 of 1991);
- (2) Syariah Court Enactment 1993 (Kedah) (Enact. No. 4 of 1993);
- (3) Administration of Islamic Religious Affairs Enactment 1993 (Penang) (Enactment No. 7 of 1993);
- (4) Administration of the Syariah Court Enactment 1982 (Kelantan) (Enactment No. 3 of 1982); and Administration of the Syariah Court (Amendment) Enactment 1998 (Kelantan) (Enactment No. 2 of 1998);
- (5) Syariah Court Enactment 2001 (Terengganu) (Enactment No. 3 of 2001);
- (6) Administration of Islamic Law Enactment 1992 (Perak) (Enactment No. 2 of 1992);
- (7) Administration of Islamic Law Enactment 1989 (Selangor) (Enactment No. 2 of 1989);
- (8) Administration of Islamic Law Enactment 1991 (Negeri Sembilan) (Enactment No. 1 of 1991);
- (9) Administration of Syariah Court Enactment 1985 (Malacca) (Enactment No. 6 of 1985);
- (10) Syariah Court Enactment 1993 (Johor) (Enactment No 12 of 1993);
- (11) Administration of Islamic Law Enactment 1991 (Pahang) (Enactment No. 3 of 1991);
- (12) Syariah Court Ordinance 1991 (Sarawak) (No 4 of 1991);
- (13) Syariah Court Enactment 1992 (Sabah) (No. 4 of 1992); and
- (14) Administration of Islamic Law (Federal Territories) Act 1993 (Act 505).

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10 See *Azizah bte Shaik Ismail & Anor v. Fatimah bte Shaik Ismail & Anor* [2004] 2 MLJ 529, FC.

It may be added that the Syariah court exercises both civil and criminal jurisdiction. However, the powers of the Syariah Court in its criminal jurisdiction is limited by the Federal law, namely, the Muslim Court (Criminal Jurisdiction) Act 1965 (No. 23 of 1965) (1965 Act). The 1965 Act provided that the jurisdiction of the Muslim courts shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding six months or with any fine exceeding RM1000 or with both. The above Act was initially applicable only to the States of Malaya.

However, in 1984, the Muslim Courts (Criminal Jurisdiction) Act 1965 was amended by the Muslim Courts (Criminal Jurisdiction) (Amendment) Act 1984 (Act A612) which had enhanced the Muslim Courts criminal jurisdiction. It provided that the jurisdiction of the Muslim courts shall not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with any fine exceeding RM5000 or with whipping exceeding six strokes or with any combination thereof.

Subsequently, in 1988 the 1965 Act was revised and renamed as the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355). This Act was made applicable to the States in West Malaysia. It substituted the words 'the States of Malaya' by virtue of the Revision of Laws Act 1968 (Act 1), s. 6(1)(iii). The Syariah Courts (Criminal Jurisdiction) (Amendment and Extension) Act 1989 (Act A730) which came in force effective from 5 May 1989 extended the applicable of the Act to 'all the States of Malaysia'. The Syariah Courts (Criminal Jurisdiction) Act 1965 (Revised 1988) came into force in West Malaysia on 1 April 1965, and in the states of Sabah and Sarawak on 5 May 1989.

It is noteworthy that in 2017, the PAS president Datuk Seri Abdul Hadi Awang had tabled a private member's bill in Parliament to amend Syariah Courts (Criminal Jurisdiction) Act 1965, the aim of which is to strengthen the position of the Syariah Courts. The Bill proposes an increase in its criminal jurisdiction to 30 years maximum imprisonment, fine up to a maximum of RM100,000 and whipping up to 100 strokes. However, it is unfortunate that the Bill is still pending in Dewan Rakyat.

Aside from the above, to streamline the proceedings in the Syariah courts, the following laws have been enacted and are enforced in the Syariah courts in the Federal Territories, namely the Syariah Court Evidence (Federal Territories) Act 1997, Syariah Criminal Procedure (Federal Territories) Act 1997 and Syariah Court Civil Procedure (Federal Territories) Act 1998. The above-mentioned statutes provide an adequate guidance on the rule of civil and criminal procedure and evidence to be applied and followed in the Syariah courts. To further coordinate the administration of Syariah courts at the national level, the Federal Government, in 1998, established the Malaysian Department of Syariah Judiciary (*Jabatan Kehakiman Syariah Malaysia (JKSM)*), which operates under the Prime Minister's Department. Its missions includes among others, to streamline the provisions of Islamic laws in Malaysia. To date, the Department has streamlined the following statutes and they are being utilised in uniformity in many states in Malaysia, namely, Administration of Islamic Law, Syariah Criminal Procedure, Syariah Civil Procedure, Syariah Court Evidence, Islamic Family law and Syariah Criminal offences, among others.

Apart from the above, art. 121 of the Federal Constitution was amended with the insertion of cl. 1A which came into effect on 10 June 1988 *vide* the Constitution (Amendment) Act 1988 (Act 704 of 1988) to settle the issue of actual separation between the jurisdiction of the civil courts and the Syariah courts and to stop the practice of aggrieved Muslim parties going to the civil High Court to review decisions made by the Syariah courts. The new cl. 1A is clearly to confer exclusive jurisdiction to the Syariah court to adjudicate on any matter that has been lawfully vested by the law within the jurisdiction of the Syariah court. It has thus taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah courts.

However, the Syariah court's jurisdiction is only on matters which the various State legislatures have enacted as conferring jurisdiction on them. The approach to be taken in determining the jurisdiction of the Syariah court is the 'subject matter' approach and not the 'remedy prayed' approach – i.e. to look into the state enactments to see whether or not the Syariah courts have been expressly conferred jurisdiction on

a given matter. If the legislature does not confer on the Syariah court any jurisdiction to deal with any matter in the State List, the Syariah court is precluded from dealing with the matter.<sup>11</sup> The exception however, is conversion out of Islam. Although it is not regulated by all the state enactments, it still falls clearly within the exclusive jurisdiction of the Syariah court.<sup>12</sup>

It may be added that the doctrine of basic structure which has found its way in Malaysia recently *vide* the Federal Court's decision in *Sivarasa Rasiah v. Badan Peguam Malaysia*,<sup>13</sup> *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat and another case*,<sup>14</sup> and *Indira Gandhi a/p Mutho v. Pengarah Jabatan Agama Islam Perak & Ors and other appeals*<sup>15</sup> has now empowered the judiciary to strike down an amendment to the constitution and Acts enacted by the Parliament which conflict with or seek to alter this basic structure of the Constitution. In *Indira Gandhi's* case, Zainun Ali FCJ stated: 'Article 121(1A) does not constitute a blanket exclusion of the jurisdiction of civil courts whenever a matter relating to Islamic law arises. The inherent judicial power of civil courts in relation to judicial review and questions of constitutional or statutory interpretation is not and cannot be removed by the insertion of cl. (1A)'. In this case, the Federal Court decreed that the civil courts had jurisdiction to hear cases when aggrieved parties questioned any conversion to Islam.

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11 The Syariah court derives its jurisdiction under State law enacted pursuant to art. 74(2) of the Federal Constitution following para 1, State List of the Ninth Schedule of the Federal Constitution and in the case of the Federal Territories, by virtue of item 6(e) of the Federal List. See *Majlis Ugama Islam Pulau Pinang & Seberang Perai v. Shaik Zolkaffly bin Shaik Natar & Anor* [2003] 3 CLJ 289, FC.

12 See *Soon Singh a/l Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah and Anor* [1999] 2 CLJ 5, FC.

13 [2010] 3 CLJ 507.

14 [2017] 5 CLJ 526.

15 [2018] 1 MLJ 545.

### 18.3 INDUSTRIAL COURT

The Industrial Court is established pursuant to Part VII of the Industrial Relations Act 1967 (Revised 1976) (Act 177) (IRA). The Industrial Court's headquarter is in Kuala Lumpur and it has six other divisions throughout the country namely, Northern Region (Penang); Central Region (Ipoh, Perak); Southern Region (Johor Bahru); Eastern Region (Terengganu); and East Malaysia (each in Sabah and Sarawak). It is the policy of the Government to establish divisions for the convenience of the parties.<sup>16</sup>

The Industrial Court is a quasi-judicial tribunal under the Ministry of Human Resource, whose aim is to provide a speedy, fair and just resolution of differences between parties to the contracts of employment in the private sector. The employees in the public sector or any statutory authority are, however, expressly excluded from the jurisdiction of this court.<sup>17</sup> Disputes between the employer and workmen or its trade unions may arise due to various reasons, be it economic or non-economic, which may be referred to the Industrial Court *vide* the Minister's reference under s. 20(3), or directly by the parties under certain circumstances.

The examples of cases referred to the Industrial Court for adjudication are as follows:

- (1) dismissal without just cause or excuse under s. 20(1) of the IRA;
- (2) trade disputes between an employer and the trade union of a workman;

16 Therefore, a case has to be instituted in the fair and appropriate venue. To have a case transferred from one division of the court to another, the court will consider the financial capacities of the parties by asking the following question: "who will be better able to absorb the financial hardship from the hearing being held in their non-preferred venue." See *JC Chang (Pte) Ltd v. Chow Kok Leong* [2000] 3 ILR 1.

17 Section 52(1) of the IRA provides: 'Parts II, III, IV, V. and VI shall not apply to any Government service or to any service of any statutory authority or to any workman employed by Government or by any statutory authority.'



- (3) cases of victimisation in connection with trade union activities;
- (4) interpretation or variation of the terms of the award or collective agreement;
- (5) referral on a question of law to the High Court by any party bound by the award; and
- (6) complaint of non-compliance of the terms of the award or collective agreement.

However, the bulk of cases referred to the Industrial Court for adjudication are cases relating to representation under s. 20(1) which had been referred to the court by the Minister.

The adjudicatory function of the court is vested in the President and Chairmen, either sitting alone, or with equal panels representing employers and workmen.<sup>18</sup> The President is the head of the organisation. He is responsible for all the functions and activities of the court. He hears and determines disputes relating to the interpretation, variation and non-compliance of awards or collective agreements or cases relating to references to the High Court on questions of law, and cases relating to writ of *certiorari*. The Registrar, who is also the Chief Administrator of the court, assists the President.<sup>19</sup> Apart from the President, there are Chairmen in several divisions of the court. They are entrusted, among

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18 Section 59(1)(g) of the IRA provides that it shall be an offence to dismiss a workman or injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice, by reason of the circumstances that the workman being a member of a panel appointed under s. 21 has absented himself from work for the purpose of performing his functions and duties as a member of the court and has notified the employer before he absented himself. An employer who contravenes any of the provisions of sub-s. (1) shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding RM2000 or to both.

19 The Registrar's responsibility includes matters relating to administration, services, personnel and finance. He/she is also in charge of confirming cases for mention and hearing. The Deputy Registrar and the Assistant Registrars assist the Registrar.

others, to adjudicate dismissal cases and cases of industrial disputes on terms and conditions of employment under s. 26 of the IRA, or such other cases as the President may direct.

The President and the Chairman of the Industrial Court are appointed by his Majesty, the Yang di-Pertuan Agong. A person is qualified for the appointment as President under s. 21(1)(a), and as Chairman under s. 23(2) of the IRA, if for the seven years preceding his appointment, he has been an advocate and solicitor within the meaning of the Legal Profession Act 1976, or a member of the Judicial and Legal Service of the Federation or State. The phrase 'seven years preceding his appointment he has been an advocate and solicitor' has been interpretation by the Federal Court in *All Malayan Estates Staff Union v. Rajasegaran & Ors.*<sup>20</sup>

In *Rajasegaran's* case, the Federal Court had to consider whether the appointment of the first respondent as the Chairman of the Industrial Court was in conformity with s. 23A(1) of the IRA, namely, whether the respondent had the requisite seven years standing in practice as an advocate and solicitor preceding his appointment as the Chairman of the court. In this case, even though the respondent had been admitted and enrolled as an advocate and solicitor for eight years and one month at the date of his appointment, nevertheless, he was only in active practice for four years, nine months and 22 days. It was contended that in order for a person to be qualified to be a Chairman of the Industrial Court, he or she must have been an advocate and solicitor with a valid practising certificate for the seven years preceding his appointment.

Augustine Paul FCJ, delivering the judgment of the Federal Court, stated that a person who is entitled to practise as an advocate and solicitor, under the Legal Profession Act 1976, is one with a valid practising certificate. His Lordship further stated that the word 'advocate and solicitor' under s. 23A(1) has to be construed as a reference to an advocate and solicitor who has been in practice under the Legal Profession Act 1976. Further, the seven-year period in s. 23A(1) is

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20 [2006] 4 CLJ 195, FC.

closely connected to the qualification of a person as an advocate and solicitor and, therefore, due weight ought to be given to these words in order to determine its purpose rather than brushing it aside as a mere addition. In particular, his Lordship stated:

Thus, the purpose of the seven-year period in relation to a member of the judicial and legal service can be used to determine the purpose of the same period in the case of an advocate and solicitor. There can be no dispute that the reference to a member of the judicial and legal service is a reference to a person who has been employed as a legal officer. The seven-year period in relation to such an officer is therefore a reference to his working experience in that capacity for the prescribed number of years. Similarly, the need for a person to have been an advocate and solicitor for seven years preceding his appointment is obviously a reference to his practice or experience as such.<sup>21</sup>

Based on the above decision, to qualify for the appointment as a Chairman, he or she must have been in active practice for seven-years or more preceding his or her appointment to such post. Apart from the qualification for the appointment of a Chairman, the President and Chairmen of this court are accorded immunity in relation to the performance of their duties and functions. Section 24(1) of the IRA provides that:

‘Every person appointed under section 21 and 23, in the performance of his duties and functions, shall be deemed to be a public servant within the meaning of the Penal Code.’

Sub-section (2) further provides that:

‘Notwithstanding anything to the contrary in any written law, no member of the Court shall be compelled by any court to appear as a witness or party in any proceedings before that Court in relation to any act, matter or thing performed by him as a member of the Court under this Act.’

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21 *Ibid*, at p. 214.

The Industrial Court performs an adjudication function in the resolution and settlement of disputes referred to it. In *Hotel Malaya Sdn Bhd & Anor v. National Union of Hotel, Bar & Restaurant Workers & Anor*,<sup>22</sup> the adjudication function of the court was described in the following terms: 'an investigation of the facts, an analysis of the facts, findings of facts, and lastly, the application of the law to those findings.' The court is unfettered by any of the traditional judicial processes and is not subject to technicality and legal considerations peculiar in the civil courts. Section 30(5) of the IRA requires the court to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal form. The above simply means that the Industrial Court is not strictly confined to the administration of justice in accordance with the law, but is more concerned with the dispensation of social justice. The scope of its enquiry is not merely restricted to law, but also to a broader aspect of equity and good conscience with the view of promoting social justice. The court, in exercising its powers, is to dispense social justice mainly to ensure peace and harmony to prevail in industrial relations.

The adjudication of labour disputes has to be done in accordance with social and not legal justice. In *Central Holdings Management Services Sdn Bhd v. Kamar Zaman Othman*,<sup>23</sup> YA Tan Yeak Hui, Chairman of the Industrial Court stated:

Parliament enacted s. 30(5) IRA 1967 so that the Industrial Court can be used as a tool to give effect to the wishes of the legislature to enable them to provide social justice to the workers of this country without being stifled by legal forms and technicalities as in the Civil Courts.

Hence substantial merits of the case and not legal technicalities should always be the dominant and decisive factor to guide the Industrial Court in finding solutions for the disputants in their quest for social justice.

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22 [1982] CLJ 460, [1982] 2 MLJ 237, 240.

23 [2006] 2 LNS 0947.

In *Harris Solid State (M) Sdn Bhd & Anor v. Bruno Gentil Pereira & Ors*,<sup>24</sup> Justice Gopal Sri Ram JCA stated:

Section 30(5) of the Act imposes a duty upon the Industrial Court to have regard to the substantial merits of the case rather than to technicalities. It also requires the Industrial Court to decide a case in accordance with equity and good conscience. Parliament has imposed this solemn duties upon the Industrial Court in order to give effect to the policy of a democratically elected Government to dispense social justice to the nation's workforce. It is therefore, our bounden duty to ensure that the Industrial court applies the Act in a manner that best suits the declared policy of the elected Government.

In *Tanjong Jara Beach Hotel Sdn Bhd v. National Union Of Hotel, Bar & Restaurant Workers Peninsular Malaysia*,<sup>25</sup> Steve Shim CJ (Sabah and Sarawak) stated:

... the Industrial Court has to bear in mind the underlying objectives and purposes of the Act itself i.e, that it is a piece of legislation designed to ensure social justice to both employers and employees and to advance the progress of industry by bringing about harmony and cordial relationship between the parties; to eradicate unfair labour practices; to protect workmen against victimization by employers and to ensure termination of industrial disputes in a peaceful manner. Clearly therefore, the *raison d'être* of the Industrial Court is to endeavour to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour and fostering good relationship.<sup>26</sup>

Apart from the above, s. 30(3) of the IRA provides that the court shall make its award without delay and where practicable within 30 days from the date of a reference to it under s. 20(3). Although s. 33B(1) of the IRA has immunised awards of the Industrial Court, in practice, being

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24 [1996] 4 CLJ 747, CA, at p. 766.

25 [2004] 4 CLJ 657.

26 *Ibid*, at p. 672.

a quasi-judicial tribunal, its decision can be successfully challenged in the civil courts with the use of the remedy under public law of judicial review for excess or lack of jurisdiction, error of law on the face of the record, breach of the rules of natural justice or where the determination was procured by fraud, collusion or perjury.

In *Sugumar Balakrishnan v. Pengarah Imigresen Negeri Sabah*,<sup>27</sup> the Court of Appeal noted that the right to seek judicial review to challenge an award or decision of an inferior tribunal is a fundamental right of a citizen enshrined in the Federal Constitution. In particular, Gopal Sri Ram JCA stated: “... the liberty of an aggrieved person to go to court and seek relief, including judicial review of administrative action, is one of the many facets of the personal liberty guaranteed by art. 5(1) of the Federal Constitution”. It was further stated that if such rights are curtailed, the Constitution would cease to have effect and the protection accorded to the citizens in the Constitution would become illusory.<sup>28</sup>

As noted in the preceding chapter, judicial review is not an appeal against a decision, but a review of the manner in which the decision was made. The duty of a judge in a judicial review application is merely to enquire into the decision-making process to be satisfied as to the correctness, legality or propriety of any decision recorded or passed and as to the regularity of any proceedings of the Industrial Court and may give such direction on the future conduct of the same, as justice may require.<sup>29</sup> The Industrial Court award is now subject to appeal to the High Court, see the Industrial Relations (Amendment) Act 2020 (Act A1615), s. 24.

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27 [1998] 3 CLJ 85, CA.

28 *Ibid.*

29 See for example Courts of Judicature Act 1964, s. 31.

## 18.4 'LABOUR COURT'

The Employment Act 1955 (Revised 1981) ('the Act'), which provides for the creation of the 'Labour Court,' is an important piece of legislation, enforced in West Malaysia, which prescribes the minimum protective rights of workers.<sup>30</sup> This includes, payment of wages and restriction in the deduction of workers' wages, maternity protection, protection of female workers by prohibiting them for night work, underground work and in certain places of work, prescribing rest day in each week, maximum hours of work a day, prescribed public holiday each year, annual leave, sick leave and overtime rate payable for extra hours of work, among others. As from the above, the primary concern of the Act is in relation to monetary benefits such as annual leave, sick leave, maternity allowance and overtime, among others.

The Act sets out the above minimum provision which must be complied and failure to provide any of those benefits is an offence for which an employer can be prosecuted in the 'Labour Court.' Further, s. 7 of the Act provides that any term or condition of a contract of service or of an agreement, which provides a term or condition of service that is less favourable to an employee than a term or condition of service prescribed by this Act, shall be void and of no effect to that extent, and the more favourable provisions of the Act shall be substituted in place. Section 7A provides that nothing in s. 7 shall be construed as preventing an employer and an employee from agreeing to any term or condition of service under which an employee is employed, or shall render invalid any term or condition of service stipulated in any collective agreement or in any award of the Industrial Court, which is more favourable to the employee than the provisions of the Act.

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30 The Act is administered by the Labour Department at the Ministry of Human Resource. The States of Sabah and Sarawak are governed by a separate set of labour legislation, namely the Labour Ordinance (Cap. 67) and the Labour Ordinance (Cap. 76), respectively.

Be that as it may, it is noted that the Act only covers persons enumerated in the First Schedule to the said Act. They are as follows:

- (1) Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed RM2000 a month;
- (2) Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which:
  - (a) he is engaged in manual labour including such labour as an artisan or apprentice; Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one half of the total time during which he is required to work in such wage period;
  - (b) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;
  - (c) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;<sup>31</sup>

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31 In *Ong Siew Giek v. International Footwear (PG) Sdn Bhd* [2004] 8 CLJ 468, pp. 471-472, the High Court had to consider the issue whether a senior production supervisor falls within the category of a manual worker as defined under s. 2(1) of the Employment Act 1955. RK Nathan J stated: "It must be remembered that the Act was passed in 1955 when the worker population was more manual-labour orientated, and needed constant supervision. Machines were also such that only a supervisor could attend when it broke down, so that his constant and vigilant attendance was necessary to keep the machines running and productivity continuous. It was with this in mind that there was a need to ensure continuous and constant supervision. Today machines are more sophisticated and supervisors have assistants to help them to relieve them of their workload. It must also be remembered that production today is many times



- (d) he is engaged in any capacity in any vessel registered in Malaysia and who – (provision of the Act not applicable – Part XII)
- (i) is not an officer certificated under the Merchant Shipping Acts of the United Kingdom as amended from time to time;
- (ii) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance, 1952; or
- (iii) has not entered into an agreement under Part III of the Merchant Shipping Ordinance, 1952; or
- (e) he is engaged as a domestic servant.

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(contd)

more than what it was in the 50's. If one supervisor is to manage alone, he would be more of a liability to the company than when he is assisted by others in the supervision. It is therefore my judgment that so long as the supervisor takes responsibility for the act of his assistant supervisors down the line and so long as he performs for the benefit of the workers, he must fall within s. 2(3) of the Act. I cannot see his approval of the workers leave as being outside the supervisory job. I agree that that supervision is unrelated to the supervision of the worker at the job. To my mind the words 'in and throughout the performance of their work' cannot be restricted to refer only to the work performance. Surely the supervisor is also entitled to see that the leave applied for by the manual worker does not fall during the time when the worker is needed most. The company might have to boost production during emergencies and the supervisor must be in a position to approve or disapprove of an applicant's leave. Surely it cannot be said that this does not fall within the act envisaged in s. 2(3) of the first schedule to the Act. He might need to attend meetings for the benefit of the workers and at such times his assistant will stand in for him. Surely because of this it cannot be said that he has no supervision over the workers. He is after all, the person, over all in charge. Law must develop and move with the times. It cannot be static nor immutable. The complainant had said under cross-examination that once instructions are given daily there was no need to give further instructions. However in any event the supervisor would be present daily. Taking this evidence with the fact that the company itself had approved and allowed the complainant to do other related work for its own benefit, and knowing that there were assistant supervisors down the line, it is unacceptable for the respondent company to deny that the complainant fell within s. 2(3) to the first schedule to the Act."

What is apparent from the above is that the Act does not cover employees whose wages exceeded the RM2,000 ceiling, unless they fall within the category of manual labour. The Act, however, neither defines nor prescribes any varieties of manual labour.<sup>32</sup> In *Chareon Pokphand Jaya Farm (M) Sdn Bhd v. Chung Lin*,<sup>33</sup> it was stated that what constitutes 'manual labour' is a question of law. In particular, Suriyadi Halim Omar J stated:

I must not be bound by flashes of muscled bound men or women with dirty finger nails and sweaty bodies, toiling away under the hot sun, to qualify them to fall within the context of 'manual labour', and thereafter erroneously arrive at a conclusion. I cannot be stuck or bound by stereotype views or common usages of those words but must travel beyond that.

Despite my attempts, regretfully I failed to identify any reasonable form of occupation that does not get the hands involved in some form or other. By analogy even a judge, who depends on his training and wisdom in the course of dispensing justice, cannot do without his hands when recording the evidence, opening the law books, handling the exhibits, and the like. Surely that judge cannot be said to be engaged in manual work, with his intellectual expertise merely incidental to his expertise and duties? It is my view that the decisive factor to be considered, especially when the expertise or technical knowledge and hands are required to work side by side, the court will have to decide which will be more primary or predominant. If the hands are merely incidental then it cannot be said that the worker has been engaged in manual labour ... Agreeably all manual labour demands the use of hands, but not all work that demands the usage of hands, must automatically fall within the purview of manual labour.

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32 It is to be noted that the proposed amendment to the Employment Act has removed the monetary cap as above. The new provision proposed reads: 'Any person, irrespective of the amount of wages he earns, has entered into a contract of service with an employer'.

33 [2006] 1 CLJ 784.

In the above case, an electrical charginan was held to be no mere manual labourer. The learned judge stated that it would be farfetched to conclude that the mere fact that one's hands were on screwdriver, he or she must have been engaged in manual labour within the context of the Act.<sup>34</sup>

As for the enforcement of the provision of the said Act, the Director General of Labour<sup>35</sup> has, pursuant to s. 69 of the Employment Act 1955, been conferred the power. The above section provides:

- (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under—
  - (a) any term of the contract of service between such employee and his employer;
  - (b) any of the provisions of this Act or any subsidiary legislation made thereunder; or
  - (c) the provisions of the Wages Council Act, 1947 or any order made thereunder, and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.
- (2) The powers of the Director General under sub-s. (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by—
  - (i) an employee against any person liable under s. 33;

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34 See also *Colgate Palmolive (M) Sdn Bhd v. Cheong Foo Weng & Ors* [2001] 1 LNS 394 where an electrical technician with a charginan's certificate was held to be a labourer of the brain and intelligence and thus, not a manual labourer.

35 For purposes of carrying out the provisions of this Act, the officers of the following categories, have been entrusted with the power namely, (a) Deputy Director General of Labour; (b) Directors of Labour, Deputy Directors of Labour, Senior Assistant Directors of Labour and Assistant Directors of Labour; and (c) Labour Officers. See s. 3(2) of the Employment Act.

- (ii) a sub-contractor for labour against a contractor or sub-contractor for any sum which the sub-contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor; or
  - (iii) an employer against his employee in respect of indemnity due to such employer under s. 13(1), and to make such consequential orders as may be necessary to give effect to his decision.
- (3) In addition to the powers conferred by sub-ss. (1) and (2), the Director General may inquire into and confirm or set aside any decision made by an employer under sub-s. 14(1) and the Director General may make such consequential orders as may be necessary to give effect to his decision:

Provided that if the decision of the employer under paragraph 14(1)(a) is set aside, the consequential order of the Director General against such employer shall be confined to payment of indemnity *in lieu* of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee;

- (a) Provided further that the Director General shall not set aside any decision made by an employer under para. 14(1)(c) if such decision has not resulted in any loss in wages of other payments payable to the employee under his contract of service:

And provided further that the Director General shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this Part within sixty days from the date on which the decision under section 14 is communicated to him either orally or in writing by his employer.

- (3A) An order made by the Director General for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director

General may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the order until the day the order is satisfied;

Provided that the Director General, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.

- (4) A person who fails to comply with any decision or order of the Director General made under this section commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one hundred ringgit for each day the offence continues after conviction.

The procedure for disposing of questions arising under ss. 69, 69B and 69C is contained in s. 70 of the Employment Act 1955. They are as follows:

- (a) the person complaining shall present to the Director General a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director General of his complaint and of the remedy which he seeks;
- (b) the Director General shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant's statement in his case book;
- (c) the Director General may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against: Provided that if the person complained against attends in person before the Director General it shall not be necessary to serve a summons upon him;

- (d) when issuing a summons to a person complained against the Director General shall give such person notice of the nature of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director General for summonses to such persons to appear as witnesses on his behalf;
- (e) when the Director General issues a summons to a person complained against he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may, on the request of the complainant and subject to any conditions as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;
- (f) when at any time before or during an inquiry the Director General has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto he may summon any or all of such persons;
- (g) the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;
- (h) if the person complained against or any person whose financial interests the Director General has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons shall fail so to attend the Director General may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;

- (i) in order to enable a court to enforce the decision of the Director General, the Director General shall embody his decision in an order in such form as may be prescribed.

In *Central Holdings Management Services Sdn Bhd v. Muhammad Zailani Mat Zin & Ors*,<sup>36</sup> the appellant contended that the labour officer was in breach of ss. 69 and 70 of the Act when she proceeded to hand down her decision without examining any of the respondents on oath in an *inter partes* hearing to substantiate the respondents' claims. The High Court set aside the order made by the labour officer, and remitted the matter back to her so as to comply with the requirements of s. 70. In particular, Raus Sharif J stated:

... in this case even if the appellant had failed to object to the labour officer's unilateral decision to hear the matter without oral evidence but merely on the strength of written submission, such acquiescence did not empower the labour officer to decide over the matter by ignoring s. 70 of the Act. To me, s. 70 clearly mandates the labour officer to take and hear evidence on oath ... To me, the above provisions of s. 70 are mandatory. It is trite law that failure to comply with such mandatory provisions would render a decision a nullity.

The following are examples of cases heard and determined by the Director-General of Labour or his authorised officers or as it is commonly referred to as 'the Labour Court':

- (1) the issue whether the relationship between the parties was a contract for services or one of service;<sup>37</sup>
- (2) claims with respect of overtime, rest day, public holidays and annual leave payments;<sup>38</sup>

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36 [2006] 6 CLJ 197, at pp. 202-203.

37 See *Ramayah A/L Marapan v. Sungai Raja Marbles Industries Sdn Bhd* [1995] 1 LNS 200; *Nissan Industrial Oxygen Incorporated Sdn Bhd v. Muji Singh A/L Jagat Singh* [1995] 1 LNS 143.

38 See *Renganathan Narayanan v. Ban Lee Sdn Bhd* [1997] 5 CLJ 535.

- (3) issues relating to terms or conditions under the contract which are less favourable than the one prescribed by the Act;<sup>39</sup>
- (4) employees' entitlement to annual leave due to temporary disablement;<sup>40</sup> termination and lay-off benefits or retrenchment benefits;<sup>41</sup>
- (5) when the claimant is entitled to the commencement of retirement benefits;<sup>42</sup>
- (6) employer's entitlement to recover any overpayment of wages made by mistake;<sup>43</sup>
- (7) illegal deductions contrary to the Employment Act<sup>44</sup> and the failure to give notice of termination due to change of ownership as required by s. 12(3)(f) Employment Act 1955,<sup>45</sup> among others.

A party who is dissatisfied with a decision of the 'Labour Court' has a right of appeal to the High Court, by virtue of s. 77(1) of the Act, irrespective of the amount in dispute or the value of the subject matter. Section 77 provides:

- (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under ss. 69, 69B, 69C or 73 such person may appeal to the High Court.

39 See *Syed Ibrahim Syed Mohd & Ors v. Esso Production Malaysia Incorporated* [2004] 1 CLJ 889, CA.

40 See *Golden Hope Plantations (Peninsular) Sdn Bhd v. Saraswathy Kathan* [2003] 2 CLJ 632.

41 See *MBF Country Homes & Resorts Sdn Bhd v. Suppiah Manickam & Ors* [2003] 5 CLJ 459.

42 See *Thong Ah Teh & Ors v. Eastern Garment Manufacturing Co Sdn Bhd* [2002] 6 CLJ 133; *Thong Ah Teh @ Thong Nam Seng & 6 Others v. Eastern Garment Manufacturing Co Sendirian Berhad* [2001] 1 LNS 356.

43 See *Kuala Lumpur Kepong Bhd v. Subramaniam Sinnappan & Ors* [1998] 5 CLJ 338.

44 See *Kuala Lumpur Kepong Berhad (Ladang Sungei Jernih) v. Subramaniam A/L Sinnappan & 43 Ors* [1997] 1 LNS 91.

45 See *Raditha Raju & Ors v. Dunlop Estates Bhd* [1996] 1 CLJ 755, CA.



- (2) Subject to any rules made under s. 4 of the Subordinate Courts Rules Act 1955, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.<sup>46</sup>

In *Austral Amalgamated Tin Bhd v. Abdul Wahab Kopon & Ors & Anor Appeal*,<sup>47</sup> it was stated that there was nothing in s. 77 which imposes any conditions that such a right of appeal to the High Court was to be barred if the amount in dispute or the value of the subject matter was below RM10,000. In determining the appeal, the High Court may examine both the legality and merits of a decision, and thereupon the court may confirm, reverse or vary the decision of the court appealed from, or may order a retrial, or remit the matter with the opinion of the court to the trial court, or may make such other order in the matter as may seem just.<sup>48</sup> As from the above discussion, the 'Labour Court' is a mechanism implemented by the Department of Labour to settle claims by workers against their employers and, as such, it exercises judicial functions.

Having said the above, it must be noted that the Court of Appeal had, in *Austral Amalgamated Tin Bhd v. Abdul Wahab Kopon & Ors & Anor Appeal*,<sup>49</sup> stated that the usage of the term 'Labour Court' is a misnomer because there is no provision for its creation under the Employment Act. In the above case, the issue before the Court of Appeal, *inter alia*, was whether the Labour Officer was a subordinate court under the Courts of Judicature Act. Nik Hashim JCA, delivering the judgment of the Court of Appeal, stated:

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46 See *Amalgamated Properties & Industries Bhd v. Rajaretnam Palaniandy* [1985] CLJ Rep 389, [1985] 2 CLJ 130.

47 [2004] 2 CLJ 316, CA.

48 See for example Courts of Judicature Act 1964, s. 60(1). See also *Soonfroze Corporation Sdn Bhd v. Siti Salabiab Chek Hassan & Ors* [2003] 6 CLJ 97, where the High Court upon hearing the appeal remitted the case back to the Labour Officer, Taiping, to be heard by another officer on its merits.

49 [2004] 2 CLJ 316, CA.

The inquiry that was conducted by the senior labour officer in the present case is the inquiry by virtue of the powers under s. 69 of the EA given to the Director General of Labour to inquire into any dispute between an employee and his employer. It is only an inquiry and not a court proceeding. It is therefore erroneous to classify the labour office as an ‘inferior court’ in the definition of ‘subordinate court’ under s. 3 of the CJA or a Labour Court as it is normally called, simply because the Labour Office is not a court in the first place. Moreover, there is no provision for a Labour Court in the EA.

18.5 NATIVE COURT OF SABAH

Native Courts have been vested with the authority to settle disputes and compensations in cases involving native matters. The hierarchy of Native Courts in Sabah as provided in Part II of the Native Courts Enactment 1992 and its constituted members are illustrated in the table below.

Hierarchy of Native Courts	Constitution of Native Courts
Native Court of Appeal	A judge of the High Court
District Native Court	Relevant District Officer
Native Court	Native Chiefs or Headmen

18.5.1 Native Court Of Appeal

The constitution of the Native Court of Appeal is contained in s. 5(2) of the Native Courts Enactment 1992. The above section provides *inter alia*, that the Native Court of Appeal shall consist of a Judge as President, and two other members who shall be District Chiefs or Native Chiefs to be appointed by the Minister to be members of such court. An appeal shall lie from any order of the District Native Court to the Native Court of Appeal. The appeal to the Native Court of Appeal shall lie – (a) as of right, on any ground of appeal which involves a question of native law or custom alone; (b) with leave of the Native Court of Appeal, on any ground of appeal which involves a question of fact or question of mixed law and fact or sentence of imprisonment.<sup>50</sup>

50 Native Courts Enactment 1992, s. 18(1).

The appellate power of the Native Court of Appeal is contained in s. 23. This section provides that the court may after hearing the appeal, (a) dismiss an appeal; (b) set aside or vary an order; (c) reduce or increase any sentence of punishment or fine or order for compensation; or (d) order a rehearing by the same or a differently constituted Native Court. Section 23(2) further provides that no order shall be varied or declared void solely by reason of any defect in procedure or want of form. The judgment of an appellate court shall be unanimous or that of the majority of its members.<sup>51</sup> The decision of this court is generally binding on the District Native Court and the Native Court.<sup>52</sup>

### 18.5.2 District Native Court

Meanwhile, the constitution of District Native Court is governed by s. 4 of the Native Courts Enactment 1992. Section 4(2) provides: 'A District Native Court shall consist of the District Officer of the district as the presiding member and two other members who shall be District Chiefs or Native Chiefs resident within the district duly empowered by the State Secretary to adjudicate in such court.' An appeal shall lie from any order of Native Court to the District Native Court in the district in which such Native Court is established.<sup>53</sup> An appeal to the District Native Court shall lie – (a) as of right, on any ground of appeal which involves a question of native law or custom alone; (b) with the leave of the District Native Court to which the appeal lies, on any ground of appeal which involves a question of fact alone or mixed law and fact or against a sentence of imprisonment.<sup>54</sup> Further, all proceedings of every Native Court shall be subject to revision by the District Native Court which, if it considers that such proceedings are irregular, improper or unconscionable, may quash or vary the same or direct a rehearing.<sup>55</sup>

51 See Native Courts Enactment 1992, s. 24.

52 See *Flora Evaristus & Ors v. Amanah Raya Bhd & Anor* [2012] MLJU 1288; *Donatus Justin v. Bernadette Anita Bte Majanil & 3 others* (Unreported Civil Suit No. K21-06-2002).

53 Native Courts Enactment 1992, s. 17(1).

54 *Ibid*, s. 17(2).

55 *Ibid*, s. 16(1).

### 18.5.3 Native Court

Section 3(2) provides that a Native Court shall consist of the District Chiefs as the presiding member and two other members who shall be Native Chiefs or Headmen resident within the territorial jurisdiction of such Native Court duly empowered by the State Secretary to adjudicate in such court. The jurisdiction of the Native Courts however, does not extend to any cause or matter within the jurisdiction of the Syariah courts or of the civil courts.<sup>56</sup> Unless otherwise directed by the Native Court, all proceedings in the Native Court shall be heard in open court to which the public may have access.<sup>57</sup> The judgment of every Native Court shall be unanimous or that of the majority of its members.<sup>58</sup>

The original jurisdiction of the Native Court is provided in s. 6(1). This section provides that a Native Court shall hear, try, determine and dispose of the following cases:

- (a) cases arising from breach of native law or custom in which all the parties are natives;
- (b) cases arising from breach of native law or custom, religious, matrimonial or sexual, if the written sanction of the District Officer acting on the advice of two Native Chiefs has been obtained to the institution of the proceedings, where one party is a non-native;
- (c) cases involving native law or custom relating to–
  - (i) betrothal, marriage, divorce, nullity of marriage and judicial separation;
  - (ii) adoption, guardianship or custody of infants, maintenance of dependants and legitimacy;
  - (iii) gifts or succession testate or intestate; and
- (d) other cases if jurisdiction is conferred upon it by this Enactment or any other written law.

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<sup>56</sup> *Ibid*, s. 9.

<sup>57</sup> *Ibid*, s. 8.

<sup>58</sup> *Ibid*, s. 7.

Section 6(3) provides that in any matrimonial or sexual case where the parties are not of the same race, the Native Court shall be guided by the native law or custom of the woman's race. Again, in any case relating to gifts or succession testate or intestate, s. 6(4) provides that the Native Court shall be guided by the native law or custom of the race of the grantor, the testate or intestate, as the case may be. Likewise, in any case relating to adoption, guardianship or custody of infants, maintenance of dependants and legitimacy, s. 6(5) provides that the Native Court shall be guided by the native law or custom of the race of the person in respect of whom the proceedings are instituted.

Where an offence has been committed against native law or custom, s. 10(1) provides that a Native Court may– (a) impose a fine; or (b) order imprisonment; or (c) award both fine and imprisonment; or (d) inflict any punishment authorised by native law or custom not being repugnant to natural justice and humanity: provided that such fine or imprisonment shall not exceed the amount or the term, as the case may be, or a combination thereof, as may be conferred by federal law.

The Native Courts (Criminal Jurisdiction) Act 1991, a federal statute, however limited the criminal jurisdiction of the Native Courts. It provides *inter alia*, that the Native Court may try offences where the punishment does not exceed a fine of more than RM5000, or imprisonment of two years, or both. No sentence of imprisonment by any Native Court shall have effect unless such sentence is endorsed by a Magistrate.<sup>59</sup> Section 12 provides that 'in addition to any penalty imposed for an offence against native law or custom, a Native Court may order the guilty party to pay to the person injured or aggrieved by the act or omission, in respect of which such penalty has been imposed, compensation in cash or in kind authorised by native law or custom.'

Further, s. 13 provides that 'a Native Court may order that any penalty or compensation payable in cash or kind which it shall impose shall be paid at such time and by such instalments in kind or otherwise as it shall think just, and in default of the payment of any such penalty or

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59 *Ibid*, s. 11

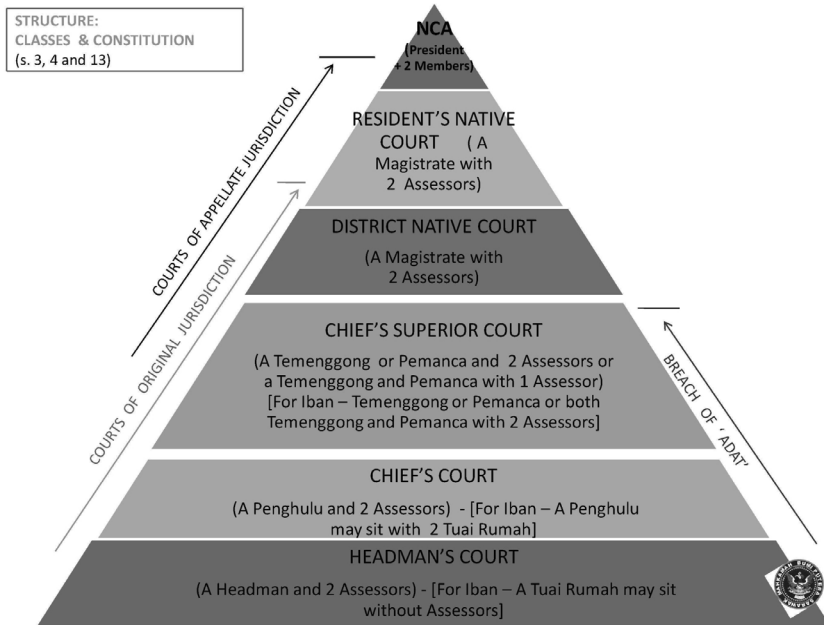
compensation or of any instalment of the same when due, the court shall order that the amount of such penalty or compensation or the instalment thereof, as the case may be, shall be levied by sale of any property belonging to the offender and situate within the territorial jurisdiction of the court.' When a Native Court imposes a penalty in kind or in cash or orders the payment of compensation under the provisions of this Enactment, s. 14 provides that the Court 'shall have power to direct by its sentence that in default of payment of the penalty or compensation, the offender shall suffer such period of imprisonment as will justify the justice of the case.'

## 18.6 NATIVE COURTS IN SARAWAK

The structure and composition of the Native Courts in Sarawak consists of the Headman's Court, Chief's Court, Chief's Superior Court, District Native Court, Resident's Native Court and the Native Court of Appeal. The table below further illustrates the hierarchical structure of native courts in Sarawak.

Hierarchy of Native Courts	Constitution of Native Courts
Native Court of Appeal	Judge with one or more assessors
Resident's Native Court	Resident with 2 or 4 assessors
District's Native Court	Magistrate and 2 assessors
Chief's Superior Court	<i>Temenggong</i> or <i>Pemancar</i> with 2 assessors or both <i>Temenggong</i> and <i>Pemancar</i> with one assessor
Chief's Court	<i>Penghulu</i> and 2 assessors
Headman's Court	Headman and 2 assessors

The composition of the above mentioned courts and their constituted members is further illustrated with reference to the following diagram.



Source: Slides presentation by Chief Registrar of Native Courts,  
Tuan Hang Tuah Merawin

As noted from the foregoing, in Sarawak, the dispute resolution structure at lower courts are handled by the headman, the *Penghulu*, *Pemanca* and *Temenggong*. While in Sabah they are handled by the headman and *Orang Kaya-Kaya*. Meanwhile, at the higher (appellate) courts level, disputes are resolved by the District Officer, the Resident (Sarawak) and a High Court judge who sits in the Native Court of Appeal. The appointment is based on their knowledge of the local customs and traditions.

### 18.6.1 Native Court Of Appeal

The composition of members of this court includes a president who is either a High Court judge or a retired judge or a person qualified to be appointed as a judge under the Federal Constitution. Other members are the president of the *Majlis Islam* Sarawak or president of *Majlis Adat Istiadat* and any person who is or who has been appointed a *temenggong* (Government-appointed community chief) on the recommendations of the appropriate authorities. Jurisdictions of the Native Court of Appeal are as follows: (i) appellate; and (ii) revisionary and supervisory jurisdiction. An appeal shall lie to the Native Court of Appeal against the decision of the Resident's Native Court. However, only cases involving land disputes and native status are brought to the Native Court of Appeal. In a review, the Native Court of Appeal is merely to enquire into the decision-making process, to be satisfied as to the correctness, legality or propriety of any decision recorded or passed, and as to the regularity of any proceedings of the Resident's Native Court, and may give such direction on the future conduct of the same, as justice may require. When there is an appeal to the Native Court of Appeal, the appellant can be represented by a lawyer.

### 18.6.2 Resident's Native Court

The Resident's Native Court has the following jurisdictions:

(a) original; (b) appellate; and (c) revisionary and supervisory. Section 20 of the Ordinance provides that the original jurisdiction of the Resident's Native Court will be to hear and determine the following matters:

- (i) for the purpose of s. 9 of the Land Code, the question whether a non-native has become identified with a particular community;
- (ii) whether a non-native who is subject to a particular system of personal law has become subject to a different personal law; and
- (iii) whether a person subject to a personal law of a particular native community has ceased to be so subject.



The decision of the Resident's Native Court on any of the above matter is subject to appeal to the Native Court of Appeal.<sup>60</sup> In relation to appellate jurisdiction, the Resident's Native Court shall hear an appeal against the decision of the District Native Court in matters concerning land disputes or native status. Meanwhile, the revisionary and supervisory jurisdiction of the Resident's Native Court is to supervise and review cases heard and determine by the courts below for the purpose of satisfying itself as to the correctness, legality, or propriety of any judgment.

### 18.6.3 District Native Court

The jurisdictions of the District Native Court are as follows:

(a) original; (b) appellate; and (c) supervisory. In its original jurisdiction, the District Native Court shall hear matters under the codified statutes, for example under the *Adat Iban* Order 1993. While in its appellate jurisdiction, the District Native Court shall hear appeal from the lower courts concerning disputes involving land where no title is issued by the Land Office. No appeal shall lie to this court on the following matters: (i) breaches of native customs and matrimonial or sexual matters; and (ii) where the judgment of the Chiefs Superior

60 In *Manggai v. Government Of Sarawak & Anor* [1970] 1 LNS 80 the former Federal Court dismissed the plaintiff's action for a declaration that the Resident's Native Court was *functus officio* and had no jurisdiction to determine an appeal from the Native District Court in respect of a decision relating to a dispute over land which the plaintiff had with one Tawi anak Selaku. It held that where there was an alternative remedy available to the plaintiff, he must pursue that remedy first (i.e., an appeal to the Native Court of Appeal). In particular the court observed: "an appeal lay from the Resident's native Court to the Native Court of Appeal. That Native Court of Appeal is presided over by a Judge of the High Court and must therefore be considered a Court which is competent to decide any question of law. The fact that the decision of the presiding Judge on a question of law could be overridden by other members of the Court is beside the point. The question of crossing that bridge would arise only when the bridge is reached. In so far as his complaint against the quashing by the Resident's Native Court of the order made in his favour by the district Court was concerned, the plaintiff should have appealed to the Native Court of Appeal instead

Court is expressly declared to be final and conclusive. Meanwhile, in its supervisory jurisdiction, the District Native Court supervises the exercise of powers by the courts below. It may, either on application of interested parties or of its own motion, investigate any case heard by the courts below, and exercise such powers which might have been exercised had there been an appeal.<sup>61</sup>

#### 18.6.4 Chief's Superior Court

The jurisdictions of the Chief's Superior Court are as follows:

(a) original; (b) appellate; and (c) supervisory.

Section 5 of the Native Courts Ordinance 1992 provides that the Chief's Superior Court shall have original jurisdiction in the following matters:

- (i) breach of native law or custom where all the parties are subject to the same native system of personal law;
- (ii) cases arising from breach of native law or custom relating to religious, matrimonial or sexual matter where one party is a native;
- (iii) civil matters (excluding cases under the jurisdiction of the Syariah Court) in which the value of the subject matter does not exceed RM2,000 and where all the parties are subject to the same native system of personal law;

(contd)

of going to the High Court. As regards his right to prosecute such appeal, the plaintiff, ironically, will now find himself in the same position as the first defendant when he failed to appeal to the Resident's native Court within the prescribed time. The High Court in striking out the portions in his writ of summons and the statement of claim in relation to the declarations sought expressly left it open to the plaintiff to pursue his claim for damages on grounds of conspiracy."

61 Wan Arfah Hamzah and Ramy Bulan, *The Malaysian Legal System* (Oxford Fajar Sdn Bhd, 2003) at p. 219.

- (iv) any criminal case of a minor nature which are specifically enumerated in the Adat Iban or any other customary law whose custom the court is bound and which can be adequately punished by a fine not exceeding that which the Native Court can award;
- (v) any matter in respect of which it may be empowered by any other written law to exercise jurisdiction.

The Chief's Superior Court, however, does not have jurisdiction over the following matters:

- (a) any proceedings in which a person is charged with an offence in consequence of which is alleged to have occurred;
- (b) an offence under the Penal Code;
- (c) any proceedings concerning marriage or divorce regulated by the Law Reform (Marriage and Divorce) Act 1976 and the Registration of Marriages Ordinance 1952, unless it is a claim arising only in regard to bride-price or adultery and founded only on native law;
- (d) any proceedings affecting the title to or any interest in land which is registered under the Land Code;
- (e) any case involving a breach of native law or custom if the maximum penalty which is authorised to pass is less severe than the minimum penalty prescribed for such offence;
- (f) cases arising from the breach of *Ordinan Undang-Undang Keluarga Islam 1991* and rules or regulations made thereunder, or the Malay custom of Sarawak;
- (g) any criminal or civil matter within the jurisdiction of any of the Syariah Courts constituted under the *Ordinan Mahkamah Syariah 1991*; and
- (h) any proceedings taken under any written law in force in the state.

The Chief's Superior Court is the highest appellate court for the following: (i) breach of *adat* and offences relation to matrimonial, religious, and sexual offences; (ii) all civil matters where the value does not exceed RM2000; and (iii) minor criminal offences. Meanwhile, the Chief's Superior Court's supervisory jurisdiction is that it exercises supervision over the Chief's Court and Headman's Court.

#### 18.6.5 Chief's Court

The Chief's Court has original and appellate jurisdiction. In relation to the former, this court hears cases involving land with no title issued by the Land Office and where all parties are subject to the same native system of personal law. In relation to the latter, this court hears appeals against the decision of the Headman's Court.

#### 18.6.6 Headman's Court

The Headman's Court may hear all matters stipulated under s. 5 above except for land dispute where there is no title to the land.

#### 18.6.7 Powers To Sarawak Native Courts To Impose Penalties

Section 11 of the Ordinance conferred on the Native Courts in Sarawak the power to impose the following penalties.

District Native Court	Imprisonment not exceeding two years and a fine not exceeding RM5000.
Chief's Superior Court	Imprisonment not exceeding one year and a fine not exceeding RM3000.
Chief's Court	Imprisonment not exceeding six months and a fine not exceeding RM2000.
Headman's Court	Fine not exceeding RM300.

### 18.6.8 Imprisonment In Default Of Penalty

In default of the payment of penalty, s. 18 empowers the Native Courts in Sarawak to direct an offender to suffer a period of imprisonment in the following manner:

Amount defaulted	Period of imprisonment
Does not exceed RM50	One month
Exceeds RM50 but does not exceed RM100	Two months
Exceeds RM100 but does not exceed RM200	Four months
Exceeds RM200 but does not exceed RM500	Six months
Exceeds RM500	Twelve months

Apart from the above, s. 19 empowers a Native Court to award compensation which may include costs and expenses incurred by a successful party or his witness. The court may also direct any penalty to be paid to the person injured or order the restitution of any property.

## 18.7 TRIBUNAL FOR CONSUMER CLAIMS

The Tribunal for Consumer Claims is established pursuant to Part XII of the Consumer Protection Act 1999 (Act).<sup>62</sup> The Tribunal operates under the Ministry of Domestic Trade, Co-operatives and Consumerism. The primary objective of establishing the Tribunal is to provide an alternative forum for consumers to file claims in a simple,

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62 Part XII is from ss. 85 to 122. The said sections govern various aspects of the Tribunal such as membership of the Tribunal, jurisdiction of the Tribunal, proceedings of the Tribunal, awards of the Tribunal and other related matters.

inexpensive and speedy manner.<sup>63</sup> The Tribunal shall consist of a Chairman and a Deputy Chairman (who are officers from the Judicial and Legal Service) and not less than five other members appointed by the Minister. Where the Chairman is for any reason unable to perform his functions or during any period of vacancy in the office of the Chairman, the Deputy Chairman shall perform the functions of the Chairman. Section 98 of the Act provides that the Tribunal shall have jurisdiction to hear consumer claims in respect of all goods and services where the total amount does not exceed RM25,000. If the amount or value of the subject matter claimed or in issue exceeds RM25,000, s. 100(1) provides that the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim. The said agreement must be lodged before a claim is made or if a claim has been lodged, the said agreement must be filed in the Tribunal at any time before the Tribunal determined the claim.

The Tribunal however, does not have jurisdiction in respect of the following claims; (i) recovery of land, or any estate or interest in land; and (ii) in which the title to any land, or any estate or interest in land, or any franchise, is in question. The Tribunal is also not authorised to deal with a claim arising from personal injury or death.<sup>64</sup> Apart from the above, the Tribunal does not deal with a dispute concerning: (i) the entitlement of any person under a will or settlement or on any intestacy; (ii) good will; (iii) any chose in action; (iv) any trade secret or other intellectual property. Further, the jurisdiction of the Tribunal shall

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63 See e-Tribunal of the Ministry of Domestic Trade, Co-operatives and Consumerism at <http://tpm.kpdnkk.gov.my/portal/index.php/en/>. In *Hello Holidays Sdn Bhd v. Phang Lai Sim & Other Case* [2013] 1 LNS 951, Vernon Ong J stated: “the intention of the legislature in enacting the CPA is for the protection of consumers. The Tribunal was created to give fair and speedy justice for the aggrieved consumer. The CPA provides a relatively fair and simple and expeditious procedure for the hearing of a claimant’s claim. It is also pertinent to note that the award of the Tribunal is final and binding.”

64 See s. 99(3) of the Consumer Protection Act 1999.

be limited to a claim that is based on a cause of action which accrues within three years of the claim. Where a claim has been lodged with the Tribunal, the issues in dispute in that claim shall not be the subject of proceedings between the same parties in any court unless–

- (a) the proceedings before the court were commenced before the claim was lodged with the Tribunal; or
- (b) the claim before the Tribunal is withdrawn, abandoned or struck out.<sup>65</sup>

All proceedings before the Tribunal shall be open to the public.<sup>66</sup> The Tribunal shall assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the claim.<sup>67</sup> The Tribunal shall make its award without delay and, where practicable, within 60 days from the first day the hearing before the Tribunal commences.<sup>68</sup> The Tribunal shall in all proceedings give its reasons for its award in the proceedings.<sup>69</sup>

Section 112 provides that the Tribunal may require the doing of any one or more of the following:

- (a) that a party to the proceedings pay money to any other party;
- (b) that goods be supplied or resupplied in accordance with this Act or the contract to which the consumer is a party;
- (c) that goods supplied or resupplied to the consumer be replaced or repaired;
- (d) that the price or other consideration paid or supplied by the consumer or any other person be refunded to the consumer or that person;
- (e) that a party comply with the guarantee;

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65 *Ibid*, s. 104(1).

66 *Ibid*, s. 109.

67 *Ibid*, s. 107(1).

68 *Ibid*, s. 112.

69 *Ibid*, s. 114.

- (f) that money be awarded to compensate for any loss or damage suffered by the claimant;
- (g) that the contract be varied or set aside, wholly or in part;
- (h) that costs to or against any party be paid;
- (i) that interest be paid on any sum or monetary award at a rate not exceeding eight per centum per annum, unless it has been otherwise agreed between the parties;
- (j) that the claim is dismissed.

The Tribunal, however, has no power to grant the remedies such as general damages, aggravated damages, and exemplary damages for severe mental and emotional pressure, frustration and disappointment.<sup>70</sup>

Every agreed settlement recorded by the Tribunal and every award made by the Tribunal shall be final<sup>71</sup> and binding on all parties to the proceedings and shall be deemed to be an order of a Magistrate's Court and be enforced accordingly by any party to the proceedings.<sup>72</sup> The Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Magistrate's court having jurisdiction in the place to which the award relates or in the place where the award was made and the court shall cause the copy to be recorded. Section 117(1) provides that any person who after 14 days fails to comply with an award made by the Tribunal commits an offence and shall on conviction be liable to a fine not exceeding RM5000 or to imprisonment for a term not exceeding two years or to both. In the case of a continuing offence, the offender shall, in addition to the penalties mentioned above, be liable to a fine not exceeding RM1000 for each day or part of a day during which the offence continues after conviction.<sup>73</sup>

70 *Lee Yuen Siang & Ors v. Wong Mee Yian* [2019] 1 LNS 1053.

71 Although the award of the Tribunal is final they are amenable to judicial review: see *Hazlinda bte Hamzah v. Kumon Method of Learning Centre* [2006] 2 CLJ 933.

72 *Ibid.*, s. 116.

73 *Ibid.*, s. 117(2).



It must be added that although s. 116 of the Act provides that the award of the Tribunal 'shall be final and binding on all parties to the proceedings' nevertheless a party who feels that the award of the Tribunal was erroneous may apply to the High Court to review the decision of the Tribunal. As noted earlier, the High Court has supervisory powers over the decisions of inferior tribunals and statutory bodies.<sup>74</sup> In *Hazlinda Hamzah v. Kumon Method of Learning Centre*,<sup>75</sup> Gopal Sri Ram, JCA (as he then was) in dealing with an award of the Tribunal for Consumer Claims held: "Being a specialist body, the Tribunal has been conferred with extraordinary powers to do speedy justice for consumers. As such, its award should not be struck down save in the rarest of cases, where it has misinterpreted some provision of the Act in such a way to produce an injustice. For courts should be ever remindful that *certiorari* is not a remedy that is available as of right. It is a discretionary remedy. It is not every error of law committed by an inferior Tribunal that entitles the High Court to issue *certiorari*. It must be demonstrated that the error has occasioned an injustice in the broad and general sense." It was also noted in *Hazlinda Hamzah's* case that pursuant to s. 114 of the Act, the Tribunal must give reasons for making its award but the section did not specify that the reasons has to be in writing nor does it fix any time limit for the delivery of the reasons. 'Having regard to the general scheme of the Act, it is sufficient if the Tribunal gives oral reasons since what is important is the speedy disposal of a dispute with oral reasons for the decision.'

74 See *Hello Holidays Sdn Bhd v. Phang Lai Sim & Other Case* [2013] 1 LNS 951; *Nasim Sdn Bhd v. Yap Suk Tee & Anor* [2012] 1 LNS 1321; *CKT Motor Racing ('A Firm') v. Amat Nasaruddin* [2011] 1 LNS 1456; *Lim Kian Tong v. Syarikat SESCO Berhad & Anor* [2011] 1 LNS 1708; *Swiss-Garden International Vacation Club Bhd v. Swiss Marketing Corporation Sdn Bhd* [2011] 9 CLJ 581; *Marie France Bodyline Sdn Bhd v. Tribunal Tuntutan Pengguna & Anor* [2009] 1 LNS 1653; *Telekom Malaysia Berhad v. Tribunal Tuntutan Pengguna & Anor* [2006] 1 LNS 155; *Sabu Development Sdn Bhd v. Kelik Bayel* [2007] 9 CLJ 475.

75 [2006] 2 CLJ 933.

## 18.8 TRIBUNAL FOR HOMEBUYER CLAIMS

The Tribunal for Homebuyer Claims is established pursuant to Part VI of the Housing Development (Control and Licensing) Act 1966 (Act 118).<sup>76</sup> The Tribunal shall consist of a Chairman and a Deputy Chairman (who are officers from the Judicial and Legal Service) and not less than five other members appointed by the Minister.<sup>77</sup> This Tribunal hears a claim that is based on a cause of action arising from a sale and purchase agreement entered into between a homebuyer and a licensed housing developer where the total amount sought does not exceed RM50,000.<sup>78</sup> Homebuyer means a purchaser and includes a person who has subsequently purchased a housing accommodation from the first purchaser of the housing accommodation.<sup>79</sup>

Example of cases heard in this Tribunal are:

- (i) claims due to defective workmanship or materials;
- (ii) construction of house or apartment not in accordance with the plans and description as specified in the sale and purchase agreement; and
- (iii) claims for late delivery of vacant possession.

Section 16N of the Act provides that the Tribunal shall have no jurisdiction in respect of any claim – (a) for the recovery of land, or any estate or interest in land; and (b) in which there is a dispute concerning – (i) the entitlement of any person under a will or settlement, or on intestacy (including partial intestacy); (ii) goodwill; (iii) any chose in action; or (iv) any trade secret or other intellectual property right.

76 In *GJH Avenue Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah, Kementerian Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Ors And Other Appeals* [2019] 1 LNS 1184, CA, Zaleha Yusof JCA stated: ‘the Tribunal is an administrative tribunal and not a court of law. According to the Hansard, second and third readings, the Tribunal was established for the purpose of minimising the burden that purchasers have to face in order to claim remedies from developers.’

77 Housing Development (Control and Licensing) Act 1966, s. 16C.

78 *Ibid*, s. 16M.

79 *Ibid*, s. 16A.

Further, the jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the licensed housing developer which is brought by a homebuyer not later than 12 months from:

- (a) the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later;
- (b) the expiry date of the defects liability period as set out in the sale and purchase agreement; or
- (c) the date of termination of the sale and purchase agreement by either party and such termination occurred before the date of issuance of the certificate of completion and compliance for the housing accommodation or the common facilities of the housing accommodation intended for subdivision, whichever is later.

If the amount or value of the subject matter claimed or in issue exceeds RM50,000, s. 160 provides that the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim. The said agreement must be lodged before a claim is made or if a claim has been lodged, the said agreement must be filed in the Tribunal at any time before the Tribunal determined the claim. Where a claim has been lodged with the Tribunal, the issues in dispute in that claim shall not be the subject of proceedings between the same parties in any court unless- (a) the proceedings before the court were commenced before the claim was lodged with the Tribunal; or (b) the claim before the Tribunal is withdrawn, abandoned or struck out.<sup>80</sup>

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80 *Ibid*, s. 16R.

All proceedings before the Tribunal shall be open to the public.<sup>81</sup> The Tribunal shall assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the claim.<sup>82</sup> The Tribunal shall make its award without delay and, where practicable, within 60 days from the first day the hearing before the Tribunal commences.<sup>83</sup>

An award of the Tribunal may require one or more of the following:

- (a) that a party to the proceedings pay money to any other party;
- (b) that the price or other consideration paid by the homebuyer or any other person be refunded to the homebuyer or that person;
- (c) that a party comply with the sale and purchase agreement;
- (d) that money be awarded to compensate for any loss or damage suffered by the claimant;
- (e) that the contract be varied or set aside, wholly or in part;
- (f) that costs to or against any party be paid;
- (g) that interest be paid on any sum or monetary award at a rate not exceeding eight per centum per annum, unless it has been otherwise agreed between the parties;
- (h) that the claim is dismissed.<sup>84</sup>

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81 *Ibid*, s. 16V.

82 *Ibid*, s. 16T.

83 *Ibid*, s. 16Y.

84 *Ibid*.

The Tribunal is also empowered to award any damages for any non-pecuniary loss or damage. The Tribunal shall in all proceedings give its reasons for its award in the proceedings.<sup>85</sup> Every agreed settlement recorded by the Tribunal and every award made by the Tribunal shall be final and binding on all parties to the proceedings and shall be deemed to be an order of a Magistrate's Court and be enforced accordingly by any party to the proceedings.<sup>86</sup> The Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the Magistrate's court having jurisdiction in the place to which the award relates or in the place where the award was made and the Court shall cause the copy to be recorded.

Section 16AD provides that any person who fails to comply with an award made by the Tribunal within the period specified by the Tribunal commits an offence and shall on conviction be liable to a fine which shall not be less than RM5000 but which shall not exceed RM10,000 or to imprisonment for a term not exceeding two years or to both. In the case of a continuing offence, the offender shall, in addition to the penalties mentioned above, be liable to a fine not exceeding RM1000 for each day or part of a day during which the offence continues after conviction.<sup>87</sup> Finally, although the award of the Tribunal shall be final and binding on all parties to the proceedings, the aggrieved party who feels that the award of the Tribunal was erroneous may apply to the High Court to review the decision of the Tribunal. In *Denia Development Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah*<sup>88</sup> the applicant's applied for judicial review of an award made by the Tribunal For Homebuyers which had allowed the second respondent's claim for late delivery against the

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85 *Ibid*, s. 16AA.

86 *Ibid*, s. 16AC.

87 *Ibid*, s. 16AD(2).

88 [2019] 1 LNS 1088.

applicant pursuant to s. 16L of the Housing Development (Control & Licensing) Act 1966. In relation to the issue whether the Tribunal was bound to provide reasons for its decision, Evrol Mariette Peters JC held, *inter alia*, that 'the duty to provide reasons for a decision is an integral part of natural justice. Parties are entitled to know why and how a Tribunal reached its decision. This is to enable the unsuccessful party to reach an informed decision on whether an Award should be challenged. The Tribunal was procedurally compelled to provide reasons by virtue of s. 16AA of the Act. If no reasons are provided, the High Court may as in this case infer that the decision maker had no valid or good reasons in reaching its conclusion.'



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